

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----:

YURI GARMASHOV, : Case No.: 21-cv-4917

Plaintiff, :

v. :

UNITED STATES PARACHUTE :

ASSOCIATION, INC., : New York, New York

Defendant. : May 3, 2023

-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING

BEFORE THE HONORABLE ONA T. WANG

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: CHALMERS, ADAMS, BACKER & KAUFMAN  
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PROCEEDINGS

1 THE DEPUTY CLERK: This is 21-cv-491;  
2 Garmashov versus United States Parachute  
3 Association, Inc.

4 Counsel, please state your appearances  
5 for the record.

6 MR. KAUFMAN: Good afternoon, Your Honor.  
7 My name is Alex Kaufman, on behalf of Mr. Garmashov.

8 THE COURT: Good afternoon.

9 MR. McLELLAN: Good afternoon, Your  
10 Honor. My name is Kenneth A. McLellan. I'm with  
11 Winget Spadafora & Schwartzberg, representing United  
12 States Parachute Association, Inc.

13 MR. ROUSSEL: Good afternoon, Your Honor.  
14 My name is Keith Roussel. I'm from the law firm of  
15 Winget Spadafora & Schwartzberg, also here on behalf  
16 of the United States Parachute Association Corp.

17 THE COURT: Okay.

18 MR. CAMPBELL: Good afternoon, Your  
19 Honor. Steven Campbell from the law firm Alston &  
20 Bird, here on behalf of USPA. This is our client,  
21 Your Honor.

22 THE COURT: Okay. Would you like to  
23 introduce your client? Or you can introduce  
24 yourself.

25 MR. BERCHTOLD: How are you doing?

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1 Albert Berchtold on behalf of the United States  
2 Parachute Association.

3 THE COURT: Okay. Oh, so you're -- we  
4 spoke on the phone, right, in some of the  
5 pre-settlement calls? Was that with you?

6 MR. BERCHTOLD: Yes, that was with me,  
7 Your Honor.

8 THE COURT: Okay. All right. No, no,  
9 no. It's okay. We're here for a status conference.  
10 We are on the record, and I envision at the end of  
11 this conference asking you all to get a copy of the  
12 transcript and share the cost 50/50. I'm going to  
13 put that right out there. If we end up talking  
14 about confidential settlement issues, I would expect  
15 you to make a joint motion to seal the transcript,  
16 but I do want a full and complete transcript here  
17 because of the considerable acrimony in the history  
18 of this case.

19 All right. Bring me up to speed. I  
20 thought that Judge Koeltl had decided the motion to  
21 enforce the settlement and we were done. Does  
22 somebody want to talk to me? I guess we'll start  
23 with Mr. Kaufman if somebody wants to talk to me  
24 about what's happened since then.

25 MR. KAUFMAN: Well, Your Honor, our

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1 position is that you're spot on. The motion to  
2 enforce was ordered on November 29, 2022. Payment  
3 has yet to be made. The judge was clear. The  
4 settlement terms were clear and unambiguous. The  
5 \$150,000 payment changed from mutual general  
6 releases, and as well as mutual confidentiality and  
7 no additional wrongdoing.

8 We pre-signed a mutual dismissal with  
9 prejudice, provided wiring instructions. Obviously,  
10 there's nothing else in the order. Surely, the  
11 judge then ordered us to then go ahead and come up  
12 with a settlement agreement. We did prepare what we  
13 thought was just those clear terms. It just never  
14 happened. We attempted to placate defendant's  
15 counsel who wanted a more robust settlement  
16 agreement. Their initial draft to us included terms  
17 that were far outside of what -- the clear  
18 parameters of the enforcery. Our view is an  
19 agreement was made. The judge affirmed that that  
20 agreement was made.

21 And I think it's important to note, Your  
22 Honor, that initial agreement from the mediation was  
23 from May 12, 2022, you know, so we're here a year  
24 later. Our view is that the attempts to get us a  
25 settlement agreement that both parties were

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1 comfortable with was something that was unnecessary.  
2 But if that's what they wanted to be attempted  
3 (indiscernible) to do that. Such things that were  
4 put in their drafts included California releases.  
5 We're here, obviously, under the laws of the State  
6 of New York. They attempted to require Mr.  
7 Garmashov to have the document notarized as a  
8 precondition. That was impossible for Mr.  
9 Garmashov. He's in a city in Russia that is 16  
10 hours or so drive to Moscow. There's reasons for  
11 him not to go to Moscow right now, as the Court is  
12 undoubtedly aware.

13 Additionally, if he did have to get  
14 notarized -- of course, not a precondition, nor any  
15 term that's in the order that Judge Koeltl  
16 codified -- it would require him to have had the  
17 entire agreement translated by a certified  
18 translator into English and at considerable time and  
19 expense. Again, unnecessary parameters.

20 There were parameters put forth in some  
21 of their drafts that included joint motions to have  
22 the agreement sealed, as Judge Koeltl had released  
23 the settlement terms. Again, additional  
24 requirements.

25 And, you know, basically, if you just

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1 took from that November date of Judge Koeltl's  
2 order -- I believe it was November 29th -- and ran  
3 the interest plus the additional attorney's fees and  
4 costs that we had to incur on behalf of  
5 Mr. Garmashov, which to date are \$27,807.59. Our  
6 view is this was clear and unnecessary. You know,  
7 defense counsel's claims, oh, you know, we reached a  
8 deal with (indiscernible) is just not true.

9 While that agreement contained most of  
10 the terms, one of the issues, of course, was now  
11 that Mr. Garmashov had incurred significant cost and  
12 was deprived of the use of that money, and has been  
13 living off credit cards and incurred additional  
14 expenses, as I mentioned, attorney's fees and costs  
15 of travel. I am barred in New York, but I reside in  
16 Atlanta. We -- you know, that interest rate, Your  
17 Honor, is \$19.85 a day, at least based upon the  
18 calculations put forth in my April attorney's fees  
19 affidavit.

20 Even if we did reach an agreement in  
21 February, which we don't consider that we did, you  
22 know, there's a provision in that last agreement,  
23 again, requiring a California release, which, as the  
24 Court knows, is different than a general release  
25 here in the state of New York. I'm not barred in

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1 California. We'd have to get additional counsel so  
2 he can review that. Again, it's not part of the  
3 original initial settlement terms, and that  
4 provision not agreeable to Mr. Garmashov.

5 The result is he's been deprived, really,  
6 for a year of that money. And -- but our  
7 calculations were from the order date. And we  
8 believe that defense counsel could have done many  
9 things. If there was such a dispute, you could ask  
10 the Court for a clarification of what the word  
11 "execute" means, which is what Judge Koeltl told you  
12 you could execute. The word "execute" means to go  
13 forth and do it, which is -- again, the court found  
14 there was an agreement. There was no order to agree  
15 to a more robust writing, which, of course, is  
16 something that I believe -- I'm not in a position to  
17 tell district judges what they can and can't do, but  
18 I don't believe that's something that would have  
19 been in his purview or his intent.

20 They could have put the money in the  
21 registry of the court to mitigate this. They could  
22 have put it in our trust account it's subject to.  
23 They didn't do that. And so the idea that they have  
24 tried to comply with the letter or spirit with the  
25 order sounds falsely. And the reality is,



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1 Mr. Garmashov has now come to New York twice. Of  
2 course, we canceled last time at the last moment,  
3 and I know that they traveled as well. But, again,  
4 those costs were incurred by Mr. Garmashov. And,  
5 you know, he -- unfortunately, that's the position  
6 he's in. And we're here to try to get recompense  
7 for that additional 20 -- almost \$28,000 in  
8 additional costs and damages that he's incurred  
9 since the day of the order.

10 So that's why we're here. We've  
11 attempted to -- we've made offers. I'm not getting  
12 into settlement conversations, but I can tell you  
13 that the -- there was no counter involved of any  
14 substance. And, you know, their position was wait  
15 and see what Your Honor would do. We find that  
16 unfortunate. There were offers, well, we'll pay the  
17 money, but we'll have to deal with this.

18 I felt uncomfortable, given the  
19 relationship and the history of signing anything  
20 that had a mutual general release, even with a  
21 carve-out to have this issue heard. Again, the  
22 first time that was offered was February 22nd. And  
23 I believe, frankly, that's just too little too late.

24 Again, they could have sent the money to  
25 (indiscernible) punish Mr. Garmashov for whatever

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1 reasons are out there.

2 I have full settlement authority. If the  
3 Court does, you know, order us to come to resolve  
4 this, I can contact Mr. Garmashov --

5 THE COURT: Okay.

6 MR. KAUFMAN: (indiscernible).

7 THE COURT: All right. Great. Thank  
8 you.

9 So just so I'm clear -- and this is a  
10 question for everybody, all the counsel --  
11 Judge Koeltl's finding is that the e-mail, the  
12 8:35 p.m., May 12, '22 e-mail, is when there is the  
13 agreement, and it's just the terms that were agreed  
14 to and confirmed in the 8:35 p.m. e-mail; is that  
15 right?

16 MR. KAUFMAN: Yes, Your Honor.

17 THE COURT: Okay. What about from  
18 defendants?

19 MR. McLELLAN: Well, I believe that's  
20 correct, Your Honor. May I respond to Counsel's  
21 presentation?

22 THE COURT: I'm not -- briefly. But I  
23 would like to say I envision us talking about this  
24 in two separate pieces. Number one is I think it's  
25 clear Judge Koeltl -- Judge Koeltl's ruling is quite

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1 clear about the motion to enforce the settlement  
2 agreement. And the settlement agreement is that  
3 8:35 p.m. e-mail, right? It doesn't include any  
4 other terms.

5 I think a separate issue is what's  
6 happened since November 29, 2022, which I would  
7 probably prefer to address after we have an -- after  
8 we come to understand why the settlement hasn't been  
9 consummated.

10 MR. McLELLAN: I can explain that, Your  
11 Honor, if I would have -- could have the  
12 opportunity, please.

13 THE COURT: Go ahead.

14 MR. McLELLAN: The order calls for the  
15 Magistrate Judge, Your Honor, to supervise the  
16 execution of a settlement agreement. The --  
17 Judge Koeltl's order calls for the execution of a  
18 settlement agreement. You refer to an e-mail, Your  
19 Honor, but that doesn't contain the language of a  
20 general release. It doesn't contain a signature.  
21 And our interpretation of the order is that we were  
22 entitled to that.

23 Counsel, in an e-mail that he sent to us  
24 right after the order was issued from Judge Koeltl  
25 initially said, we'd like you to wire us \$150,000,

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1 but let us know if you have a different view,  
2 showing that there was at least two interpretations  
3 of the order possible. That wasn't our  
4 interpretation of the order, that Judge Koeltl's  
5 order required us to immediately wire \$150,000 to  
6 the order of plaintiff's counsel. We look to have a  
7 settlement agreement.

8 Counsel is referring to the California  
9 release issue. I don't want to get into that in too  
10 much detail, but I would only point out that this is  
11 the second lawsuit referable to this incident,  
12 meaning the second lawsuit having to do with  
13 Mr. Garmashov's membership having been terminated.  
14 The first lawsuit was brought in California by  
15 Mr. Kaufman's firm at the time. There is some law  
16 in California that raised concerns with my  
17 principals, and we simply wanted to address that in  
18 the release. I'm -- there should be no reason that  
19 Counsel should have any concern about that if the  
20 intent is for this to be the end of the lawsuit and  
21 my clients to be released, which that should be what  
22 happens after my client issues payment.

23 The rest of the issues that happened in  
24 terms of the settlement agreement were routine  
25 issues that happen when you go back and forth with

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1 counsel. There was nothing unusual. But we did  
2 come to the point where, unfortunately, Counsel  
3 threaten -- began to threaten us and use more  
4 threatening language, which is when we wrote a  
5 letter to Your Honor on February 7th. And then  
6 Your Honor immediately ordered a settlement  
7 conference to be held in April, which was  
8 subsequently adjourned to today.

9 But the issue is, all of the billing that  
10 counsel generated that's attached to his motion to  
11 hold my clients in contempt -- which is without  
12 merit -- was billing that was incurred after we  
13 requested a conference. Counsel didn't need to do  
14 that. And, thereafter, we worked diligently. And  
15 recently who appeared in the case, Mr. Campbell of  
16 Alston & Bird was of great assistance to us. We  
17 worked on the settlement agreement.

18 Counsel now says that he disagrees that  
19 an agreement has been reached. But I'm here to  
20 report to the Court, happily, that it's our  
21 understanding -- and we have e-mails to that  
22 effect -- that the agreement language that we have  
23 come to with Mr. Kaufman mirrors the terms of the  
24 order of Judge Koeltl. And I understand that  
25 Mr. Garmashov, if he's living on credit cards, if

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1 he's having that type of problem, if he signs this  
2 agreement that Mr. Kaufman has already agreed to, he  
3 could simply get paid within three days after that.  
4 So I'm not sure why he wants to do that, why he  
5 needs to live off credit cards.

6 The other issue is the terms that are in  
7 the present settlement agreement are innocuous  
8 terms, and we feel that Mr. Kaufman -- we understand  
9 that he believes the best way to protect his client  
10 is to make a motion for contempt. I have to be  
11 honest with you, Judge, in 25 years of practice,  
12 I've never had somebody make a motion for contempt  
13 before in this situation, especially when there's a  
14 settled case. And we now have a settlement  
15 agreement. It's simply not necessary, Judge. And  
16 it's racked up a lot of damages that Counsel didn't  
17 need to rack up. He brought a bazooka to kill a  
18 fly. It certainly wasn't necessary.

19 And Counsel indicates that there were  
20 negotiations. I don't want to get into the detail  
21 of the negotiations, but when we were just outside,  
22 Counsel's offer was the 100 percent of the amount of  
23 the claim damages on contempt. That's not  
24 negotiation in my book, Judge.

25 Thank you for listening. And I wanted to

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1 note that -- if I may, Mr. Campbell may have  
2 something to add. He's recently appeared in the  
3 case.

4 THE COURT: Go ahead.

5 MR. CAMPBELL: Thank you, Your Honor.

6 Only one thing I wanted to add is that,  
7 prior to the order being issued, the parties  
8 understood that if a term -- if the term sheet was  
9 agreed to, if there was an agreement reached at the  
10 mediation, that there would be a long form  
11 settlement agreement memorializing those terms. And  
12 we -- this is in the record, but -- so the term  
13 sheet, as you pointed out earlier, what Judge Koeltl  
14 said were the terms of the agreement -- when  
15 plaintiff's counsel, Mr. Kaufman, e-mailed that term  
16 sheet to Mr. McLellan, he stated that if you -- if  
17 your client signs the term sheet -- now, I quote --  
18 "We can move forward and we can render a final draft  
19 agreement to you."

20 And then also in the record is an e-mail  
21 that Mr. McLellan sent to the mediator stating, "The  
22 USPA will require an agreement with a  
23 confidentiality provision and no admission of  
24 liability, among other standard terms."

25 I only say that because in interpreting

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1 the order from Judge Koeltl, it was our  
2 understanding that both parties wanted to put that  
3 agreement into writing. And so it's extremely  
4 reasonable that USPA took that view.

5 And, in fact, while plaintiff, you know,  
6 reserved the right to object to that approach,  
7 plaintiff's counsel did engage in negotiating a  
8 settlement agreement. And so that's what the  
9 parties endeavored to do. They were unable to, for  
10 a couple of months, get there, but then by February  
11 22nd, they did reach an agreement, which, as Mr.  
12 McLellan stated, plaintiff's counsel said mirrors  
13 Judge Koeltl's order.

14 So we have a settlement agreement that  
15 everyone agrees has the terms that need to be in  
16 there, nothing more, nothing less. And as soon as  
17 that's signed, USPA will pay within three days.

18 THE COURT: Now, what I heard from  
19 Mr. Kaufman -- and he's shaking his head right  
20 now -- is that the February 22nd -- the February  
21 settlement agreement may mirror the terms of the  
22 term sheet, but it adds certain things, certain  
23 requirements that are unacceptable and that were not  
24 on the term sheet, right?

25 MR. CAMPBELL: No. Well, that's -- I



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1 disagree, Your Honor. The --

2 THE COURT: Do you want to -- does  
3 somebody want to hand up the draft February  
4 settlement agreement and the term sheet? If you  
5 have an unmarked --

6 MR. McLELLAN: I have the confidential  
7 agreement that in my -- according to me and  
8 according to e-mail correspondence we had with  
9 Mr. Kaufman, this is -- right, what I have right  
10 here is what mirrors the terms of Judge Koeltl's  
11 agreement. I'll be happy to hand it up. I don't  
12 know if it's a court officer here or --

13 THE COURT: My law clerk can take it.

14 MR. McLELLAN: May I approach or -- I  
15 don't want to --

16 THE COURT: Yes.

17 MR. CAMPBELL: Your Honor, if I may just  
18 add that -- so we sent this new agreement. That's  
19 when I came into the case. I took a look at it, and  
20 I said, you know, let's just start from scratch. I  
21 took Judge Koeltl's order in one hand.

22 THE COURT: When did you come into the  
23 case again?

24 MR. CAMPBELL: Right. So it was after --  
25 I don't remember the exact date. I didn't make an

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1 appearance in the case until much later, about a  
2 month after, I think, but it was after the motion  
3 for contempt had been filed. It was about a week  
4 before, I think -- a few days before I sent the new  
5 agreement, and that was February 20th.

6 THE COURT: So this is -- what I'm  
7 holding in my hand right now that Mr. McLellan has  
8 handed up is what you're all talking about as the  
9 February agreement?

10 MR. KAUFMAN: Yes.

11 MR. CAMPBELL: Yes.

12 THE COURT: Okay.

13 MR. McLELLAN: That's the February 22nd  
14 agreement, Judge.

15 THE COURT: Okay.

16 MR. CAMPBELL: We sent that on  
17 February 20th, and then plaintiff's counsel came  
18 back --

19 THE COURT: I don't -- I'm not into --  
20 I'm going to cut with a very -- I'm not even going  
21 to call it a knife. I'm going to cut with a machete  
22 right now, okay, because this case needs to be over.  
23 You all need to go your separate ways, and you need  
24 to move on, and you need to do this, and  
25 Mr. Garmashov needs to get his money, all right.

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1                   So I'm seeing this settlement and  
2                   release. And, Mr. Kaufman, you're saying that while  
3                   the -- let me paraphrase in words that may be more  
4                   acceptable to defendants.

5                   You're saying that the February 22nd  
6                   agreement contains the terms from the term sheet,  
7                   but it also adds additional terms. And those added  
8                   additional terms or requirements are what are  
9                   unacceptable.

10                  MR. KAUFMAN: Yes, Your Honor. You're  
11                  spot on.

12                  THE COURT: Okay.

13                  MR. KAUFMAN: The California -- the  
14                  language is in that version, and it still hasn't  
15                  addressed -- it reserves the right for us to have  
16                  this contempt issue, which the idea that we only  
17                  incurred attorney's fees starting after -- with the  
18                  filing is just inaccurate. The Court's got the  
19                  record of the billing in the record.

20                  THE COURT: All right. What's -- does  
21                  somebody have a copy of the term sheet they can hand  
22                  up?

23                  MR. KAUFMAN: Yes, Your Honor. I have it  
24                  digitally from the court -- I have the court's  
25                  actual order, if that would please the Court.

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1 THE COURT: Wait, but that -- does that  
2 have the term sheet in it?

3 MR. KAUFMAN: I thought you were  
4 suggesting the -- what I e-mailed over, where they  
5 agreed in May; May 12th.

6 THE COURT: Yes.

7 MR. KAUFMAN: It's attached -- he --  
8 Judge Koeltl puts it directly in his order.

9 THE COURT: Oh, okay. Where is it in the  
10 order?

11 Does anybody have a copy of the term  
12 sheet?

13 MR. KAUFMAN: (indiscernible).

14 THE COURT: Oh, that's that block quote  
15 at the top of page 3 of ECF 63?

16 MR. KAUFMAN: Yes, Your Honor. That's  
17 right out of the e-mail, and then we signed it.

18 MR. CAMPBELL: I have a marked-up  
19 redacted copy, if you want to see the actual --

20 THE COURT: Yeah, I'd like to see an  
21 actual unredacted...

22 MR. CAMPBELL: I think this is -- this is  
23 it, right?

24 MR. McLELLAN: Yes, that's --

25 MR. CAMPBELL: My apologies for the

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1 highlighting.

2 THE COURT: Okay. That's okay.

3 Okay, let me see. Well, the highlighting  
4 or the --

5 MR. CAMPBELL: This was -- this is what's  
6 in the -- sorry, Your Honor. This is what was in  
7 the record. This is --

8 THE COURT: The redaction, yeah. No,  
9 that's my problem. So we don't have -- nobody has  
10 an unredacted --

11 MR. KAUFMAN: Your Honor, if I can pull  
12 my e-mail for a second, I'll be able to --

13 THE COURT: Okay. Yeah.

14 MR. KAUFMAN: (indiscernible).

15 THE COURT: Okay. Here, you can have  
16 this back.

17 And so what will happen after you get a  
18 copy of the transcript is that the transcript will  
19 be available to you all for redaction, and then  
20 you're going to redact maybe -- probably the  
21 numerical amounts, or we'll redact certain sections.  
22 You're going to agree on a section to redact, okay,  
23 before it gets filed on the docket, or we may end  
24 up -- depending on what this transcript looks like,  
25 we may just end up sealing the entire transcript.

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1 MR. KAUFMAN: Your Honor, I apologize.  
2 It looks like my firm only lets my e-mail go back to  
3 November of 2022 (indiscernible).

4 THE COURT: Oh, dear.

5 MR. KAUFMAN: But we -- it is quoted.  
6 Like I said, it is quoted in there. And those are  
7 the only terms there, and then Mr. Garmashov signed  
8 it. We can send it over. But I think the Court  
9 accurately describes the -- and I can probably find  
10 the -- if I go into the PACER, I can find it as an  
11 attached exhibit for our motion to enforce.

12 THE COURT: Okay. All right. So when  
13 the USPA's offer went up to -- redacted --  
14 membership was removed from the equation.  
15 "Plaintiff's counsel then took the stance that only  
16 a higher offer would be considered. We and the USPA  
17 rightfully consider that as an abandonment of the  
18 request for membership."

19 Oh, I see. So the -- wait. So the case  
20 would settle for a specified sum of 150,000 with  
21 mutual dismissals with prejudice, mutual general  
22 releases of all claims and allegations, mutual  
23 confidentiality as to the terms of the agreement,  
24 but this is -- is this -- this order is unredacted,  
25 right? So --

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1 MR. KAUFMAN: Yes, correct, it's -- to  
2 the world at this point, which was also our view of  
3 why it seemed -- and, of course, it means the  
4 general releases would be the same thing as mutual  
5 dismissal with prejudice, which is what we produced  
6 and signed and gave to counsel immediately to hold  
7 until we got the money wired.

8 THE COURT: Right. So that -- that set  
9 of terms -- "case would settle for a specified sum  
10 of 150,000 with mutual dismissals with prejudice,  
11 mutual general releases of all claims and  
12 allegations, mutual confidentiality as to the terms  
13 of the agreement, and no admission of liability by  
14 any party" -- those are the terms on the term sheet.

15 MR. KAUFMAN: That was it. It was just  
16 four bullet points, Your Honor, and our client  
17 signed it, and it was signed "mediation settlement  
18 agreement."

19 THE COURT: Okay. And that's what was  
20 handed up that -- where all the bullet points were  
21 redacted?

22 MR. KAUFMAN: Yeah. That's why I said  
23 the Court properly listed it. They said we had an  
24 agreement in principle. That was it. But at this  
25 point, it's -- you know, I can't do anything about

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1 the confidentiality. Mutual general releases,  
2 again -- I'm going to take out your new microphone,  
3 Your Honor.

4 Mutual general releases would be the same  
5 as mutual dismissals. So our view is very simple --  
6 and we provided the wiring instructions. So wire  
7 the money. You have the mutual dismissals with  
8 prejudice. We're done.

9 THE COURT: Okay.

10 All right. Mr. McLellan?

11 MR. McLELLAN: Yes, Your Honor.

12 THE COURT: Yeah, what did you want to  
13 say?

14 MR. McLELLAN: I just wanted to add --  
15 Counsel did refer, unfortunately, to the dollar  
16 amount of the settlement in his motion to enforce  
17 the settlement, so that cat got out of the bag. But  
18 we still would like to have confidentiality in our  
19 agreement. And it is in this --

20 THE COURT: Even though the entire terms  
21 are in a court order, ECF 63, and there was no  
22 timely motion made to seal for that?

23 MR. McLELLAN: Your Honor, I don't think  
24 counsel has any objection to there being  
25 confidentiality.



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1 THE COURT: No, I don't think so either,  
2 but I -- it's a little bit -- it's a -- the horse is  
3 gone. The barn door is wide open. It has been wide  
4 open since last November.

5 MR. McLELLAN: I understand --

6 THE COURT: What's your point? And by  
7 the way, Judge Koeltl would probably not be willing  
8 to redact his order. So regardless of  
9 confidentiality at this point going forward, sure,  
10 you can agree to confidentiality, but it's all right  
11 here in ECF 63.

12 MR. McLELLAN: Judge, I understand that.  
13 We are not disputing that issue any longer.

14 THE COURT: Okay.

15 MR. McLELLAN: We understand that it --  
16 that the dollar amount was listed in the order, and  
17 we're not -- we don't want to go back and revisit  
18 that. We want to go forward.

19 The only issue is, is that we did want to  
20 point out, in -- although this case is pending in  
21 New York, there is an action brought under  
22 California law in the complaint. It's in Count 4.  
23 It's violation of California Business and  
24 Professional Code § 17200, which is what raised  
25 concerns on my client's side.

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1 THE COURT: Okay. Sit down, please.

2 Mr. Kaufman, tell me about the California  
3 case. That's another case where your client's a  
4 plaintiff?

5 MR. KAUFMAN: Well, Your Honor, we  
6 originally filed the action in California. We  
7 dismissed it and decided to bring it here for  
8 logistical reasons. Mostly -- mainly because I'm  
9 barred here and I switched --

10 THE COURT: Okay. So why are we talking  
11 about a California case? Why are we talking about  
12 California law? Why do we care?

13 MR. McLELLAN: Judge?

14 THE COURT: Yeah, go ahead.

15 MR. McLELLAN: It's just -- no. What I'm  
16 referring to is the California statute that is  
17 raised in this case that's in New York. That's  
18 this -- what I just read to you is Count 4 of the  
19 complaint in this court, which is referable to the  
20 California Business and Professional Code § 17200,  
21 which, again, is what raised concerns on my --

22 THE COURT: If you're dismissing this  
23 case with prejudice, why does it matter?

24 MR. McLELLAN: That would be the question  
25 I'd pose to Mr. Kaufman, why does he care --

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1 THE COURT: And why does it -- why is it  
2 in here? I have a mind -- here's a couple things; I  
3 have a mind to just oversee you all signing -- and  
4 Mr. Kaufman can sign on behalf of his client. We  
5 can get his client on the phone, as I understand,  
6 ensure verbally that he has full authority to sign  
7 on his behalf, and we can read the agreement to him.  
8 But we can do this two ways, I propose.

9 One is we can take a clean copy of  
10 ECS 63, bracket the language right there. You all  
11 sign it. That's your settlement agreement. Or we  
12 can take those terms, type it up into four bullets  
13 again, and you all sign it again. What do you want  
14 to do?

15 MR. McLELLAN: Your Honor, may I confer  
16 with my client and co-counsel on this?

17 THE COURT: Sure.

18 MR. McLELLAN: May we --

19 THE COURT: Yeah. You know what? Let's  
20 take a break. You can go into the jury room, have a  
21 conversation, and then just come out when you're  
22 ready; okay?

23 MR. McLELLAN: Thank you, Judge.

24 (A recess was taken.)

25 THE COURT: All right.

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1 MR. McLELLAN: Thank you, Your Honor, for  
2 the opportunity to confer. I've spoken with our --  
3 my client. He's willing to execute the order that  
4 Judge Koeltl issued, which becomes our settlement  
5 agreement. And then he is willing to, when he  
6 returns to his office, which is in the Washington,  
7 D.C. area -- tomorrow he will be back in his office.  
8 He can issue a check to Yuri Garmashov, which will  
9 be overnighted to Mr. Kaufman's office.

10 THE COURT: Any thoughts, Mr. Kaufman?

11 MR. KAUFMAN: I'm fine with that, Your  
12 Honor. That's all we wanted. I do, obviously, want  
13 to address the contempt issue, the additional  
14 damages Mr. Garmashov incurred for such a simple  
15 solution.

16 THE COURT: Okay.

17 MR. KAUFMAN: But we have no problem. I  
18 have authority. I just texted him.

19 THE COURT: Okay. Why don't we do this,  
20 why don't we print a clean copy of ECF 63 because I  
21 wrote on the one that I have, unless one of you has  
22 a clean copy. And why don't we just have you all  
23 sign, including Mr. Kaufman, even though I  
24 understand that Mr. Garmashov had already signed the  
25 previous term sheet. We'll just have you all sign

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1 on the same document.

2 MR. KAUFMAN: No problem.

3 THE COURT: Is that all right? Okay.

4 Does defense counsel have any issue at  
5 all about whether Mr. Kaufman has the authority to  
6 sign on behalf of his client?

7 MR. CAMPBELL: If he represents that he  
8 does, then we --

9 THE COURT: Okay. All right. So just so  
10 we're all clear, the language of the term sheet  
11 appears at the bottom of page 3 of ECF 63, right,  
12 that starts with, that the only terms delineated in  
13 the draft were that, quote. And it goes through to  
14 the closed quote, right?

15 MR. KAUFMAN: Yes, Your Honor. And just  
16 for reference in the record, Exhibit 5 at  
17 Document 37, which is our motion to enforce, had  
18 the -- it was titled "Mediation Settlement Agreement  
19 Terms and Conditions." That's where Judge Koeltl  
20 took those verbatim. It's just redacted in the  
21 public forum because we were trying to abide by our  
22 end of the confidentiality that it needed the Court,  
23 of course (indiscernible) --

24 THE COURT: He just decided that he would  
25 put them in the order.

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1 MR. KAUFMAN: Yes.

2 THE COURT: Okay. Let me just check to  
3 see if there's an unredacted version of that visible  
4 to court users.

5 So how did you do this when you made the  
6 motion before Judge Koeltl; did you send unredacted  
7 hard copies to him?

8 MR. KAUFMAN: I believe that's what we  
9 did because we tried to --

10 THE COURT: Okay.

11 MR. KAUFMAN: Or we maybe e-mailed his  
12 staff attorney, Your Honor.

13 THE COURT: Okay.

14 MR. KAUFMAN: I'm not at the same firm as  
15 what we did at the time, so --

16 THE COURT: Okay.

17 MR. KAUFMAN: -- I don't have records.  
18 And I don't have that file because that firm got hit  
19 with a cyber attack, so we're -- that's the  
20 situation.

21 THE COURT: All right.

22 MR. KAUFMAN: (indiscernible).

23 THE COURT: All right. So we'll go  
24 forward with this somewhat unorthodox view. So I  
25 guess I'll mark the section in red ink and point

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1 that out as the settlement, okay. This will become  
2 the settlement agreement.

3 All right. So we're going to hand that  
4 down, and I suppose you can each sign it.

5 MR. KAUFMAN: Okay, Your Honor. And for  
6 the record, I'm signing now on behalf of  
7 Mr. Garmashov, with authority as his attorney, as  
8 well as I'll sign it in my capacity as well as  
9 counsel of record. And I'm going to sign it with  
10 blue ink.

11 THE COURT: All right. Thank you.

12 MR. KAUFMAN: Your Honor, may I hand it  
13 over to opposing counsel?

14 THE COURT: Please do.

15 MR. McLELLAN: Thank you, Counsel.

16 May I present this to my client for a  
17 signature?

18 THE COURT: Please do.

19 MR. McLELLAN: I have a black-ink pen for  
20 Mr. Albert Berchtold, the executive director of the  
21 United States Parachute Association, to sign.

22 THE COURT: All right. Thank you.

23 And please print your names under each of  
24 your signatures if you haven't done so already.

25 MR. McLELLAN: Your Honor, before the --

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1 excuse me. Before the Court, I'm signing my name as  
2 counsel at page 3 in black ink at this time.

3 THE COURT: Okay.

4 MR. McLELLAN: I finished signing it,  
5 Your Honor.

6 THE COURT: All right. Thank you.

7 All right. My law clerk is going to just  
8 take it so I can just take a look at it, and then --  
9 actually, just the page -- since the opinion order  
10 is multiple pages, but the settlement agreement is  
11 contained on that single page, 3, what we're going  
12 to do is we're going to scan that page in color  
13 because that page becomes your settlement agreement.  
14 And then we'll either -- we can print out black and  
15 white copies for you, and we can also e-mail you the  
16 color copy; okay?

17 MR. KAUFMAN: Thank you.

18 MR. McLELLAN: Thank you, Judge.

19 THE COURT: All right. Hold on just  
20 while we get that done.

21 (Pause in proceedings.)

22 THE COURT: All right. Just a minute  
23 while we wait on this.

24 All right. So my law clerk is going to  
25 take the agreement, scan just the page 3. We'll



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1 e-mail copies to you. We'll bring you hard copies  
2 that are black and white, okay, so you each will  
3 have a copy to take with you.

4 Just a minute.

5 MR. KAUFMAN: Your Honor, just as a  
6 housekeeping matter, since I've switched firms, may  
7 I put on the record I'm handing my accurate mailing  
8 address via business card to counsel and his client?

9 THE COURT: This is the one that's  
10 attached here?

11 MR. KAUFMAN: Yes, Your Honor, that's  
12 correct.

13 THE COURT: This is new firm? Okay.

14 MR. KAUFMAN: Chalmers, Adams, Backer &  
15 Kaufman.

16 THE COURT: Okay. Yeah.

17 MR. KAUFMAN: Thank you.

18 MR. McLELLAN: Thank you.

19 THE COURT: All right. On to -- the  
20 motion for contempt is -- it's fully briefed, right?  
21 It's been fully briefed?

22 MR. KAUFMAN: Yes, Your Honor.

23 MR. McLELLAN: Yes, Your Honor.

24 THE COURT: All right. The Court could  
25 construe that -- we're not going to decide it now,

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1     okay, but I do want to reach -- try to reach some  
2     kind of closure on that since we do now have a  
3     signed settlement agreement.

4                 Is -- we could construe it as a motion  
5     for attorney's fees. Is there -- or is there  
6     another -- you know, we could invite plaintiff to  
7     withdraw it. I could see potentially some reasons  
8     why they might be resistant, but -- you know, or is  
9     there briefing or supplemental briefing you might  
10    want to have -- if we were to construe it as a  
11    motion for attorney's fees, is there any  
12    supplemental briefing you might want to have in  
13    light of the fact that we now have a signed  
14    settlement agreement?

15                MR. KAUFMAN: Your Honor, from the  
16    plaintiff's perspective, we don't wish to withdraw  
17    that motion. You know, we've incurred about \$28,000  
18    in attorney's fees. The only additional briefing,  
19    which would have been an updated affidavit based  
20    upon once I return home and what that total time and  
21    bill would be. I'm happy to stand in my place for  
22    the Court to give a -- you know, an estimate of what  
23    I believe it is on both sides so that we can proceed  
24    as of now. Otherwise it's fully briefed. And my  
25    preference is for -- you know, one is that -- just a

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1 clear understanding that, yes, we've now signed the  
2 settlement agreement. We haven't released these bad  
3 faith claims or contempt claims or attorney's fees  
4 claims -- however the Court wishes to categorize it,  
5 just for clarification. And my hope would be to  
6 minimize any further cost and exposure and expense  
7 for Mr. Garmashov so he can move on with his life.

8 So we don't believe we need any  
9 additional briefing. If the Court would want an  
10 updated affidavit, I can -- of course, the math  
11 is -- math is we put in the interest rate, although  
12 I heard the Feds raised it a quarter of a point  
13 today, but I don't want to go back to it.

14 THE COURT: We're not going to go there.  
15 Look, I will tell you -- so you had incurred -- your  
16 client had incurred about 28,000 in fees and costs  
17 since -- up to when? What's the date range that  
18 that covers?

19 MR. KAUFMAN: Your Honor, that covers and  
20 has been in the accurate form since Judge Koeltl's  
21 order on November -- I believe it was the 29th,  
22 2022, up to and through today.

23 THE COURT: Through today, the 28,000?

24 MR. KAUFMAN: Well, the 28,000, exactly,  
25 that's through today. My affidavit was, I believe,

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1 4 or \$5,000 less, but, of course, I -- we've had to  
2 incur airfare to come here, brief preparing, and  
3 then being here in court.

4 THE COURT: Okay. Okay.

5 MR. KAUFMAN: (indiscernible). And the  
6 additional month of the interest, which is about  
7 \$600 or so.

8 THE COURT: Okay. All right. Go ahead,  
9 Mr. McLellan.

10 MR. McLELLAN: Thank you, Your Honor. I  
11 appreciate the opportunity to be heard, and I  
12 appreciate your assistance with the settlement  
13 agreement today.

14 The billing I have from counsel begins on  
15 February 8, 2023, for the drafting of the motion for  
16 contempt. I don't have billing from earlier than  
17 that for Counsel. With respect, I understand  
18 Counsel is from Atlanta, but he brought the case in  
19 New York, and there were adjournments that were  
20 beyond our control. We don't believe that our  
21 client should be charged for that.

22 And if I could, since Counsel did have  
23 the opportunity to submit an affidavit, I would like  
24 the opportunity to submit a brief response to that  
25 along those lines if counsel is not going to

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1 withdraw it. I certainly don't want to burden the  
2 Court, Mr. Garmashov or my own client, for that  
3 matter, but if the motion is going to be heard,  
4 short brief, and that could be done by next Friday.

5 THE COURT: Okay. I anticipate this  
6 being on the papers. I really don't want any of  
7 you -- now that we have a signed settlement  
8 agreement, I would really prefer that we all be able  
9 to move on from this case.

10 And although I don't think it has been  
11 referred to me, but -- oh, maybe it has. I was just  
12 looking at the docket header, and my initials are  
13 right after Judge Koeltl's, which suggests that it's  
14 already been referred, but I would construe it as a  
15 motion for attorney's fees.

16 I -- here's what I would suggest, why  
17 don't we give it a week for everything to cool down,  
18 for money to come in -- (indiscernible due to audio  
19 skipping) on the motion for attorney's fees.

20 I think you all have been able to detect  
21 by the words I have said and the tone I have used  
22 that I would prefer not to have to address it, but I  
23 will address it, if need be.

24 The other question I had is, is the  
25 February agreement part of the briefing right now?

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1 Mr. Kaufman, you're shaking your head.

2 MR. KAUFMAN: As part of the brief --  
3 yes. And just one point of clarification --

4 THE COURT: It's in the briefing. Okay.

5 MR. KAUFMAN: And it's in -- and that's  
6 part of what the attorney's fees are going back and  
7 forth. And Mr. McLellan Makes an excellent point.  
8 The fees that I can show right now are just since I  
9 was at my new firm. The old firm, as I mentioned  
10 earlier, had a cyber attack, but we were clearly  
11 going back and forth since November. So this is a  
12 low estimate of what these attorney's fees numbers  
13 are --

14 THE COURT: Okay.

15 MR. KAUFMAN: -- Mr. Garmashov as to what  
16 he's received. Unfortunately, my prior firm, Hall  
17 Booth Smith, can't -- one of these was attackers  
18 there, for the record.

19 THE COURT: That's rough.

20 MR. KAUFMAN: Hence, why they're there.  
21 But a point of clarification, I wanted the Court to  
22 know, these are on the lower end because they're  
23 missing three or four months. And that, of course,  
24 is associated working with me here as well as in  
25 just my time. And these were iterations back and

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1       forth and calls with counsel and e-mails.

2               Your Honor, in light of your direct words  
3       and insinuations, perhaps you could order us to take  
4       10, 15 minutes to attempt to negotiate it because we  
5       have a resolution and we want to read it on the  
6       record and be completely finished, as they have  
7       counsel and a party with authority, and I can have  
8       Mr. Garmashov available right now.

9               THE COURT: Yeah. You know what, though,  
10       I do, unfortunately, have something that is supposed  
11       to be starting in two minutes that I have to take in  
12       chambers, so -- but what I -- here's what I will do,  
13       I will put an outside date for you to write a joint  
14       letter in about whether you were able to resolve it.  
15       And if not, then you propose some -- you know, some  
16       dates for supplemental briefing.

17               If there is this matter of incomplete  
18       attorney's fees records for Mr. Kaufman, consider  
19       whether you might either agree to a number or allow  
20       me, if I end up having to decide an attorney's fees  
21       motion, to try to triangulate that number based on  
22       defense counsel's billing records, okay.

23               I mean, that's -- those are some of the  
24       ways that you might try to -- want to try to work  
25       this out. But I also do want to give you some time

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1 to cool down a little bit after the money's been  
2 sent, after everything is said and done.

3 What I'm going to do is I am going to  
4 provisionally docket the settlement agreement as a  
5 sealed document. Judge Koeltl may have other ideas,  
6 particularly because it's really not contributing  
7 anything. It's not hiding anything other than  
8 the -- you know, what's already out there and is not  
9 going to be taken back. So I'm going to  
10 provisionally docket it, but leave it up to Judge  
11 Koeltl whether, you know, it should be public or  
12 not, okay.

13 So I'll give Mr. McLellan his clean copy  
14 of the February agreement back. And is there  
15 anything else we need to do at this time?

16 MR. KAUFMAN: No. Although, certainly  
17 (indiscernible) we can work it out now, it sounds  
18 like if Your Honor is here and we can reach a  
19 resolution, would we be able to bother you to put it  
20 on the record and be finished if we are successful?

21 THE COURT: You know what you could do,  
22 you could actually write it out and sign it all,  
23 okay, and then give it -- and then leave it with my  
24 clerk, or, you know, just e-mail chambers if you  
25 can, or call chambers and let us know it's here,



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1 because I will not be able to physically be  
2 available starting from about right now, okay.

3 MR. KAUFMAN: Thank you, Your Honor.

4 THE COURT: All right. No, thank you,  
5 all, for your time. Thank you for coming in.

6 Anything else from defense counsel?

7 MR. McLELLAN: Not from me, Your Honor.

8 THE COURT: Okay. So how about -- let's  
9 give you two weeks. That would be May 17th for --  
10 I'll call it a joint status letter on the docket.  
11 Joint status letter, May 17th on any outstanding  
12 issues, okay.

13 MR. KAUFMAN: And will that date also be  
14 put as a docket order?

15 THE COURT: Yes.

16 MR. KAUFMAN: Okay. Thank you.

17 THE COURT: Yeah. Okay. All right.  
18 Thank you very much, everyone. All right. We are  
19 adjourned.

20 Again, requesting the parties order a  
21 copy of the transcript. Share the cost 50/50.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Garmashov v. United States Parachute Association, Inc.; Docket #21CV4917 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: May 19, 2023